

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 15840 of 2004

Between:

K.Rajya Lakshmi D/o. Veera Raghava Rao, aged 55 years,
Hindu, cashier, Veleru Large Seized Corporation Credit society Ltd.,

R/o. Veleru Village, Bapulapadu Mandal, Krishna District.

..... PETITIONER

AND

1 The Sub Divisional Coop. Officer/Arbitrator o/o the Divisional Coop. Office,

Nuzvidu, Krishna District.

2 Potluri Prasad, S/o. P.Venkata Subba Rao R/o. Veluru, Bapulapadu Mandal,

Krishna District.

3 Veleru Large Seized Cooperation Credit Society Ltd., No.H.805,

R/o. Veluru, Bapulapadu Mandal, Krishna District. rep by its Secretary.

4 The Coop. Appellate Tribunal Besant Road, Governerpet, Vijayawada.

5 Sri K.Rama Koteswara Rao, Ex-Secretary, Veleru Large Seized Corporation

Credit Society Ltd.,Veleru Village, Bapulapadu Mandal, Krishna District.

6 The Dy. Registrar, KDCC Bank Ltd., Machilipatnam.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari by calling for the records leading up and including the impugned order passed by the 4th respondent Cooperative Appellate Tribunal, Vijayawada in O.A.No.107/2001 dated 29.3.2004 declaring the same as illegal, arbitrary and unconstitutional and quash the same.

Counsel for the Petitioner:MR.Y.SUBRAHMANYAM

Counsel for the Respondent Nos.1, 3, & 4: GP FOR COOPERATION

Counsel for the Respondent Nos.2, 5 & 6: None appeared.

The Court made the following :

ORDER:

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The petitioner is the cashier of 3rd respondent-Veluru Large sized Cooperative Credit Society Limited, Bapulapadu(M) Krishna District (for short 'the Society').

On a dispute raised by the second respondent-Sri Potluri Prasad, the first respondent-Arbitrator passed an Award, dated-29.06-2001 in Claim No.1/2001-2002 under Section 61 of the A.P. Cooperative Societies Act fastening certain liability against the petitioner and the 5th respondent holding that the second respondent has not availed the loan on his fixed deposit receipt. But the petitioner with the help of 5th respondent has availed the loan, taking advantage of their position as employees of the Society, and therefore the

first respondent- Arbitrator directed the 3rd respondent-Society to pay the loan amount to the second respondent and recover the same from the petitioner as well as the 5th respondent jointly.

Questioning the said order of the first respondent, O.A.No.107 of 2001 was filed by the petitioner on the file of the A.P. Cooperative Appellate Tribunal at Vijaywada, and the Tribunal also dismissed the same by its order-dated 29.03.2004.

Aggrieved by the same, the present Writ Petition is filed.

The contentions of the petitioner that, no reasonable opportunity was given and there was no evidence to show that the petitioner in collusion with the 5th respondent has availed the loan on the fixed deposit receipt of the second respondent has been negatived and both the authorities below and held that the petitioner in collusion with the 5th respondent has manipulated taking advantage of their position and obtained a loan on the fixed deposit receipt of the second respondent and therefore, both of them are liable to pay the said amount.

I have perused the Award passed by the first respondent-Arbitrator as well as the order of the 4th respondent-A.P. Cooperative Appellate Tribunal, Vijayawada.

Admittedly, the petitioner deposited an amount of Rs.90,361/- by renewing his previous fixed deposit for a period of 60 months at the rate of 14.5% per annum interest vide F.D.R.,No.01383 on 17.07.1996. The fixed deposit loan amounting to Rs.80,000/- has been disbursed in the name of the second respondent on 23.07.1996 as per the cash book. The transaction has been entered in the fixed deposit loan ledger. The loan application bond and the vouchers have been found in the own handwriting of the petitioner herein and the cash was paid as per the orders of the 5th respondent viz. Sri K.Ramakoteswara Rao. There is no explanation from the petitioner as to why the loan application as well as the loan bond and the entry in the cashbook were in her own handwriting. There is evidence to show that when the loan was taken, the

second respondent-holder of the fixed deposit receipt was not in the village. There is also evidence to show that the second respondent went to Bombay for a period of eight months and thereafter he came back and wanted to avail the loan, but the loan was not given to him on the ground that already loan was availed on his fixed deposit receipt. The petitioner admitted before the Arbitrator that she has not verified the signature of the loanee in the voucher and other forms and stated that without verifying the signatures, she has paid the loan to the second respondent. But, the said contention was not accepted by both the authorities below as the second respondent was not at all received the said loan amount.

The manner in which the bond, voucher and other relevant documents that have been written in the own handwriting of the petitioner, I am of the opinion that

both the authorities below have rightly come to the conclusion that the petitioner with the help of 5th respondent played fraud in obtaining the loan on the fixed deposit receipt of the second respondent. The contention of the petitioner that the signatures on the voucher, loan bond etc. belongs to the second respondent was rightly rejected in view of the fact that the said signatures were not tallying with the specimen signatures of the second respondent available in the bank and therefore, the petitioner failed to establish that the signatures for obtaining the loan belongs to the second respondent and no steps have been taken by the petitioner to send the said documents to the handwriting expert when the case was pending before the first respondent-Arbitrator. Only after filing the appeal before the 4th respondent-Tribunal, such a plea was taken and such plea was rightly rejected by the Appellate Authority on the ground that in the absence of taking any such steps before the first respondent-Arbitrator, it is not open for the petitioner to take such a plea before the 4th respondent-Tribunal.

The petitioner filed M.P.Nos.1185 of 2002 and 1184 of 2002 in O.A.No.107 of 2001 on the file of the A.P. Cooperative Tribunal, Vijayawada for receiving

additional evidence and also to cross examine the second respondent-fixed deposit holder, the 5th respondent-Ex-secretary and the Village Administrative Officer respectively and both the petitions were dismissed by the Tribunal. Aggrieved by the same, the petitioner herein filed W.P.Nos.16039 of 2003 and 16604 of 2003 and the same were dismissed by this Court by orders dated 17.10.2003 and 23.03.2004 respectively. Therefore, I am of the opinion that the 4th respondent-A.P. Cooperative Appellate Tribunal has rightly rejected the request of the petitioner to receive the additional evidence and also to cross examine the respondents 2, 5 and the Village Administrative Officer.

The petitioner states that the claim of the second respondent was barred by time and therefore the Award proceedings of the first respondent-Arbitrator as upheld by the 5th respondent-Tribunal are illegal and unsustainable.

I am of the opinion that when the fraud has been played, the question of limitation does not arise and fraud vitiates everything and therefore it is not open to the petitioner to say at this juncture that the reference of claim of the second respondent and resolving the dispute to the first respondent-Arbitrator is barred by

time.

For the aforesaid reasons, I do not see any merits in any of the contentions of the petitioner and I am of the opinion that the concurrent findings of the authorities below cannot be interfered with.

Accordingly, the Writ Petition is dismissed. No costs.

V.ESWARAIAH, J

Dated: 31-03-2005

CCM

To

1 The Sub Divisional Coop. Officer/Arbitrator O/o the Divisional Coop. Office,
Nuzvidu, Krishna District.

2 The Secretary,Veleru Large Seized Cooperation Credit Society Ltd., No.H.805,
R/o. Veluru, Bapulapadu Mandal, Krishna District.

4 The Chairman, A.P.Coop. Appellate Tribunal Besant Road, Governerpet,
Vijayawada.

5 The Deputy Registrar, KDCC Bank Ltd., Machilipatnam.

6 Two CCs to the G.P. for Cooperation, High Court buildings, A.P.Hyderabad (OUT).

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